

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
BINGHAMTON DIVISION**

William A. Jacobson, on behalf of himself and others
similarly situated,

Plaintiff,

v.

Mary T. Bassett, in her official capacity as Acting
Commissioner of the New York Department of Health,

Defendant.

Civil Action No. 3:22-cv-
00033-MAD-ML

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF NATIONAL BIRTH
EQUITY COLLABORATIVE, NATIONAL MEDICAL ASSOCIATION, AMERICAN
MEDICAL ASSOCIATION, MEDICAL SOCIETY OF THE STATE OF NEW YORK,
AMERICAN COLLEGE OF PHYSICIANS, AMERICAN PUBLIC HEALTH
ASSOCIATION, COUNCIL OF MEDICAL SPECIALTY SOCIETIES, NEW YORK
STATE ACADEMY OF FAMILY PHYSICIANS, COMMUNITY SERVICE SOCIETY
OF NEW YORK, HOUSING WORKS, CALLEN-LORDE COMMUNITY HEALTH
CENTER, PARTNERS IN HEALTH, AND MEDICAL AND HEALTH EQUITY
PROFESSIONALS AND ACADEMICS AS *AMICI CURIAE* IN OPPOSITION TO
PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF
DEFENDANT’S MOTION TO DISMISS**

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Proposed *Amici* respectfully move for leave to file the attached brief in opposition to Plaintiff's motion for a preliminary injunction and in support of Defendant's motion to dismiss. Proposed *Amici* are medical, health equity, and social science experts as well as organizations with direct experience on the frontlines of the COVID-19 pandemic, including in New York.¹ Neither party to this case objects to this motion.²

IDENTITY AND INTERESTS OF *AMICI CURIAE*

The National Birth Equity Collaborative (NBEC) is a non-profit organization dedicated to creating transnational solutions that optimize Black maternal, infant, sexual, and reproductive well-being. NBEC is committed to shifting systems and culture through training, research, technical assistance, policy, advocacy, and community-centered collaboration, with the goal of improving the health and well-being of Black pregnant people, their children, and their communities. One of the founding tenets of reproductive justice is the ability to live in safe and sustainable communities, and the COVID-19 pandemic has severely hindered the ability of people around the world to do so. Global research also demonstrates that the pandemic disproportionately impacts marginalized and racialized populations due to the preexisting realities of racism, anti-Blackness, imperialism, and capitalism.

Established in 1895, the National Medical Association is the nation's oldest and largest professional and scientific organization that represents more than 50,000 African American physicians and their patients, and advocates for parity and justice in medicine, the elimination of

¹ *Amici* state that no counsel for any party authored the proposed brief in whole or in part, and no person or entity, other than *Amici* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

² Counsel for Defendant indicated she takes no position on *Amici*'s motion. Counsel for Plaintiff stated he does not oppose *Amici*'s motion so long as it is filed no later than Wednesday, February 23.

disparities in health and promotion of health equity.

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including New York. The AMA and the Medical Society of the State of New York (MSSNY) join this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

MSSNY is an organization of over 20,000 licensed physicians, medical residents, and medical students in New York State. Members participate in both the state society and in their local county medical societies. MSSNY is a non-profit organization committed to representing the medical profession as a whole and advocating health-related rights, responsibilities, and issues. MSSNY strives to promote and maintain high standards in medical education and in the practice of medicine in an effort to ensure that quality medical care is available to the public.

The American College of Physicians (ACP) is the largest medical specialty organization in the U.S. Its membership includes 161,000 internal medicine physicians, related subspecialists, and medical students. Internists apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP and its physician members lead the profession in education, standard-setting, and the sharing of knowledge to advance the science and practice of internal medicine.

The American Public Health Association (APHA) champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 22,000 individual members and is the only organization that combines a 150-year perspective, a broad-based member community and the ability to influence federal policy to improve the public's health.

The Council of Medical Specialty Societies (CMSS) is a coalition of 47 specialty societies representing more than 800,000 physicians across the house of medicine. As the national organization of specialty societies, CMSS provides a proactive platform to assess and address emerging issues across specialties that influence the future of healthcare and the patients we serve.

The mission of the New York State Academy of Family Physicians (NYSAFP) is to improve the health of patients, families, and communities by serving members of the Academy through education and advocacy and guided by principles of inclusivity and community. NYSAFP seeks equity for our members, by encouraging and providing opportunities for member participation and empowerment through inclusivity and for our patients, by examining and correcting barriers to equal access to health care. Members understand the history of structural racism of the profession, within health care generally, and within the Academy. We have resolved to understand and address how racial bias has impacted access to health care, equity in treatment and opportunity for people of color in the medical profession. We seek a future where all people reach their maximum potential.

The Community Service Society of New York (CSSNY) is a non-profit organization that

works to expand access to healthcare, affordable housing, opportunities for individuals with conviction histories, debt assistance, and more. CSSNY believes that equitable access to fundamental rights like healthcare will make New York stronger. CSSNY works directly with New Yorkers on numerous issues, including navigating the COVID-19 pandemic.

Housing Works is a community-based non-profit organization formed in 1990 with a mission to end the dual crises of homelessness and AIDS. Housing Works now provides a range of integrated services that reach over 25,000 low-income New York City residents annually, primarily persons who identify as Black or Latinx, with a focus on the most vulnerable and underserved—those facing the challenges of homelessness, HIV, mental health issues, substance use disorder, other chronic conditions, and incarceration. Our comprehensive prevention and care services include over 700 units of supportive housing and four Federally Qualified Health Centers that provide primary health care and a full range of behavioral health services, including low-threshold harm reduction interventions. In response to the COVID-19 crisis, since April 2020 Housing Works has also operated an isolation hotel for people experiencing homelessness who require a safe and private place to recover from COVID-19, provided medical and behavioral health services at other COVID-19 isolation and stabilization hotels, and offered free COVID-19 testing and vaccination in the communities we serve.

Callen-Lorde Community Health Center is a global leader in LGBTQ health care. Callen-Lorde serves non-centralized medically underserved populations and provides sensitive, quality health care and related services targeted to New York's lesbian, gay, bisexual, and transgender communities — in all their diversity — regardless of ability to pay. Callen-Lorde also pioneers research, advocacy and education to drive positive change in health care. Callen-Lorde's community-based work seeks to advance health equity and racial justice.

Partners In Health (PIH) is a non-profit, global health organization that fights social injustice by bringing the benefits of modern medical science first and foremost to the most vulnerable communities around the world. PIH focuses on those who would not otherwise have access to quality health care, and partners with the world's leading academic institutions to create rigorous evidence that shapes more sound and all-inclusive global health policies. The unprecedented COVID-19 pandemic has exposed the inequity of health systems around the world, disproportionately impacting people of color, the poor, and historically marginalized communities; and PIH has responded to calls for assistance from health ministries, local administrators, and clinicians overwhelmed by this latest health emergency to help fill crucial gaps through an equity-centered approach.

Proposed *Amici* also include professionals and scholars in the medical, health equity, and social science fields with deep expertise in health equity and COVID-19 issues. These *Amici* have been at the forefront of COVID-19-related research and/or medical practice, and include health equity scholars and thought leaders:³

Dr. Monica McLemore, RN, PhD, FAAN, Associate Professor, Family Health Care Nursing, University of California, San Francisco School of Nursing

Dr. Denis Nash, PhD, MPH, Distinguished Professor of Epidemiology and Executive Director, City University of New York (CUNY) Institute for Implementation Science in Population Health

Dr. Diana Romero, PhD, MA, Associate Professor, Department of Community Health and Social Sciences, CUNY Graduate School of Public Health & Health Policy

Dr. Joseph Osmundson, MS, PhD, Clinical Assistant Professor of Biology, New York University College of Arts & Science

Dr. Oni Blackstock, MD, MHS, Founder and Executive Director, Health Justice

Dr. Robert L. Cohen, MD, New York City Board of Correction; Former Vice President for Medical Operations, New York City Health and Hospitals Corporation

³ Affiliations of these *Amici* are provided for identification purposes.

Dr. Alexis Merdjanoff, PhD, Clinical Assistant Professor of Social & Behavioral Sciences, NYU School of Global Public Health, and Faculty Affiliate, Center for Anti-Racism, Social Justice & Public Health

Justin M. Feldman, ScD, Health and Human Rights Fellow, Harvard FXB Center for Health and Human Rights

ARGUMENT

District courts have “broad discretion to grant or deny an appearance as *amicus curiae* in a given case.” *Hart v. Town of Guilderland*, No. 1:20-CV-475-(MAD/DJS), 2020 WL 8411581, at *1 (N.D.N.Y. July 28, 2020) (quoting *Citizens Against Casino Gambling v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007)). “A court may grant leave to appear as an [*amicus*] if the information offered is timely and useful.” *Id.* (quoting *Andersen v. Leavitt*, No. 03-CV-6115, 2007 WL 2343672, *2 (E.D.N.Y. Aug. 13, 2007)).

As leading medical, health equity, and social science experts and frontline medical organizations, *Amici* have a strong interest in ensuring that quality, evidence-based, and appropriate medical care is available to all patients, including communities of color. This interest is particularly strong in the face of the COVID-19 pandemic, which has taken more than 68,000 lives in New York and 932,000 lives nationally.⁴ *Amici* submit this brief to underscore the substantial medical and scientific literature that supports the New York Department of Health’s acknowledgment that “longstanding systemic health and social inequities have contributed to an increased risk of severe illness and death from COVID-19” for minoritized populations.⁵ The brief further provides

⁴ N.Y. State Dep’t of Health, *COVID-19 Fatalities Tracker*, on.ny.gov/3HINh4j (last visited Feb. 23, 2022); CDC, *COVID Data Tracker*, <https://bit.ly/3Du7Glz> ((last visited Feb. 23, 2022).

⁵ N.Y. State Dep’t of Health, *Prioritization of Anti-SARS-CoV-2 Monoclonal Antibodies and Oral Antivirals for the Treatment of COVID-19 During Times of Resource Limitations*, at 2 (Dec. 29, 2021); N.Y. State Dep’t of Health, *Memorandum Re: COVID-19 Oral Antiviral Treatments Authorized and Severe Shortage of Oral Antiviral and Monoclonal Antibody Treatment Products* (Dec. 27, 2021).

insights from professionals who have been on the frontlines of the COVID-19 pandemic, including in New York. Accordingly, the proposed brief will “offer insights not available from the parties, thereby aiding the Court.” *Hart*, 2020 WL 8411581, at *1 (quoting *Andersen*, 2007 WL 2343672, at *2); *see also Soos v. Cuomo*, 470 F. Supp. 3d 268, 284 (N.D.N.Y. 2020) (“An amicus brief should normally be allowed . . . when the amicus has unique information or perspective.”) (quoting *Best Payphones, Inc. v. Dobrin*, 410 F. Supp. 3d 457, 465 n.3 (E.D.N.Y. 2019)). The proposed brief will not delay the litigation, given that it is being provided to the Court at the very beginning of the proceedings and before briefing on Plaintiff’s motion for emergency relief has been completed. *See Hart*, 2020 WL 8411581, at *1.

Counsel for *Amici* has consulted with the parties’ counsel. As noted above, neither opposes this motion. No notice of motion, pre-motion letter, or conference are necessary. *See Hon. Mae D’Agostino Individual R. & Practices 2(A)*, n.1; Local Rules 7.1(a)(2), 7.1(b).

Dated: February 23, 2022

Respectfully submitted,

s/ Rachel L. Fried

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CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2022, a true and accurate copy of the foregoing motion was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Rachel L. Fried

Date: February 23, 2022